

May 31, 2002

**POLICY STATEMENT
TO STATE WATER RESOURCES CONTROL BOARD
RE. PETITION TO REVISE DECLARATION OF FULLY
APPROPRIATED STREAM SYSTEMS REGARDING THE
AMERICAN RIVER, SACRAMENTO COUNTY**

You have before you a petition to revise the declaration of fully appropriated stream systems applicable to the American River in Sacramento County. The declaration was originally based on the finding made in Water Right Decision 893, adopted by the State Board in 1958, that no unappropriated water exists in the American River system during August through October. SWRCB Order 89-25 expanded that season, finding that there is no water available for appropriation from July 1 through October 31.

Water Right Decision 893 contains minimum instream flow provisions for protection of beneficial uses, including fish, in the lower American River. However, both the State Board and the state and federal resources agencies now recognize that the 1958 D-893 instream flows are outdated and inadequate.

In an August 1990 State Board workplan that reviewed water rights on the American River, the State Board concluded that the flow requirements contained in D-893 "do not provide an adequate level of protection to the uses in the lower American River" (SWRCB 1990. Workplan. Review of Water Rights on the American River). The State Board's workplan contained a schedule for completing major activities that were to result in an updated flow standard for the lower American River. The schedule called for this work to be completed by November 1992. The work has not been completed.

In essence, the State Board is considering granting relief from the declaration of fully appropriated stream status without the benefit of having in place an instream flow release standard protective of beneficial uses in the American River.

The lower American River has not been operated to D-893 standards for many years. The Department of Fish and Game, National Marine Fisheries Service, United States Fish and Wildlife Service and other stakeholders including local entities, voluntarily participate in the American River Operations Group along with the U.S. Bureau of Reclamation. That group provides recommendations to Reclamation on timing and release of flows from Folsom Dam for protection of aquatic resources in the American River. Those recommendations typically far exceed D-893 flow levels.

In 1993, the City and County of Sacramento created the Water Forum in response to years of conflict in the Sacramento region water-planning arena that resulted in degradation of aquatic resources in the American River, and gridlock in meeting the expanding water needs of a rapidly growing urban area. The Water Forum is a diverse group of business and agricultural leaders, environmentalists, citizens groups, water managers and local governments. In April 2000 after 7 years of negotiations, Water Forum participants signed an agreement designed to achieve two coequal objectives. The objectives are:

Provide a safe and reliable water supply for the region's economic health and planned development through the year 2030;
and
Preserve the fishery, wildlife, recreational and aesthetic values of the Lower American River.

One of the major elements of the Agreement is an improved pattern of fish flow releases from Folsom Reservoir, to replace the outdated D-893 standards. Water Forum staff and stakeholders have been diligently working on this element for the last several years. It is our intention, in partnership with the U.S. Bureau of Reclamation, to bring to the State Water Resources Control Board, for consideration and action, an improved flow management plan by this winter, 2002, or early in 2003.

In State Board Resolution 99-112, the State Board supported efforts of the Water Forum to develop a master water plan for the Sacramento area, and has agreed that upon receipt, the State Board will initiate an expedited process to consider adoption of a flow management plan for the lower American River.

In addition, the Water Forum agreement contains provisions regarding water budgets that are dependent upon existing water rights, quantified water extractions from both surface and groundwater, and sustainable yields for the Sacramento region's 3 groundwater basins --North Area (north of the American River), Central Area (south of the American River and north of the Cosumnes River), and South Area (south of the Cosumnes River). Any conditions permitted by the State Board that may result in changes to the water balance provided for in the Water Forum Agreement could result in changed conditions to the Water Forum Agreement, and thus force re-negotiation of some issues.

Based on the foregoing, the Water Forum Successor Effort respectfully requests that the State Board consider the following during deliberations on this petition:

1. Do not take any actions, or make any decisions that may prejudice the State Board's consideration of a flow management plan when it is brought to the State Board this winter. For example, this determination should not reduce water needed for instream beneficial uses.

2. Ensure that there is sufficient reliable information in the record to understand how flows in the American River have been affected by groundwater historically, and how this is changed by Aerojet groundwater treatment operations (both pumping and discharge) since the State Board's 1958 decision finding that there is no water available for appropriation in the lower American River from July through October.

Thank you for your consideration.

Respectfully,

Leo Winternitz, Executive Director
Water Forum Successor Effort



FRIENDS
OF THE
RIVER

**Policy Statement of Friends of the River
American River FAS Petition
Before the State Water Resources Control Board**

May 31, 2002

It is evident that this proceeding may have limited utility to inform the petitioner about the potential success of its evident effort to seek to appropriate "abandoned" groundwater being discharged to the American River as a result of groundwater cleanup actions being undertaken by other parties.

In order to set the stage for any such appropriation action (or develop clarity on the necessity of alternative groundwater replacement action) it would seem necessary to establish a set of additional findings beyond the announced scope of this proceeding; including whether the original designation of full appropriation is still an accurate assessment of the circumstances here – given existing water demands (including public trust values) and water rights on the American River and the CVP. (Note that the Water Forum Agreement calls for a renewed Declaration of Full Appropriation to be submitted with the revised Lower American River Flow standard that hopefully will be submitted to the Board next year.)

In addition, a Board action that provides the FAS petitioners with clarity on whether they can achieve "priority" on such "abandoned" waters over senior water rights holders, public trust values — or even adjacent groundwater users who could make the case that this was "their" groundwater as well — is fundamental to the petitioners understanding of the prospects of success of the approach on which they appear to be embarking.

Given the stated commitments by parties undertaking groundwater cleanup actions to the petitioners (and by extension, other potentially affected groundwater users) to provide alternative supplies, it would seem important for the Board to resolve key issues expeditiously, so that necessary arrangements between the parties can be undertaken with confidence and in a timely manner.

If this proceeding does not open up the American River's fully appropriated stream status, many of these key issues will become moot. A contrasting result will not have that effect, because the narrow scope of this proceeding will not clarify or resolve key issues important to the petitioners and other parties concerned with matters in this watershed.

Sincerely yours,

Ronald Stork
Senior Policy Advocate, Friends of the River
915 20th Street, Sacramento, CA 95814

California Department of Water Resources ¹
Policy Statement
Before the State Water Resources Control Board
Hearing on Declaration of Fully Appropriated Stream Systems
Regarding the American River, Sacramento County
May 31, 2002

The Board has before it a petition by Southern California Water Company to revise the Declaration designating the American River as a fully appropriated stream during July 1 through October 31. During this Hearing, DWR respectfully requests that the Board keep in mind that flows from the American River during the months in question are important to DWR and USBR because this is often when balanced conditions occur in the Delta. During these months, as the USBR testimony will describe, the SWP and CVP are often required to make releases of their stored water to meet the water quality standards in the Delta. Under Water Right Decision 1641, DWR and USBR share the responsibility to meet the Delta standards, and American River flows help meet these water quality needs.

In fact, under D-1594, the Board imposes Standard Term 91 on certain water right permits with priority after 1965 to prevent these permittees from diverting water when USBR and DWR are using their stored water to meet Delta standards. As will be demonstrated by the USBR testimony, Term 91 is often in effect in July and August. During Term 91 there is not sufficient water in the system to meet existing uses and Delta water quality needs. Only if the Aerojet discharge amounts to sufficient quantity of new water to prevent Term 91 conditions, will the introduced flow be available for diversion. Otherwise, it must remain in the river for water quality purposes. If SCWC were to establish a right to appropriate American River water, as a new permittee, it would most likely be subject to Term 91, preventing it from diverting any new water discharged by Aerojet during the months when Term 91 is in effect.

DWR is also concerned that Aerojet's extraction of groundwater is inducing flow from the American River. As will be discussed by the Department of Fish and Game in its testimony, the section of the American River where the groundwater extraction is occurring is underlain primarily by permeable sand and gravel channel deposits. Historical groundwater contours in the area suggest that the American River is a losing stream in this reach. DWR believes that before any determination is made to revise the Declaration of Fully Appropriated Stream, the petitioner must provide sufficient information about the influence of pumping on the watercourse. And, DWR respectfully requests that the Board carefully consider this information in evaluating whether the discharge of the extracted groundwater actually introduces new water, or whether it is merely circulating the same water. If it is not new water, the basis for revising the Declaration is doubtful.

¹ Presented by Cathy Crothers, Staff Counsel Department of Water Resources

Even if some new water has been added to the American River by the discharge, documentation by the Board and others, such as SWRCB Decision 1400 and the Water Forum Agreement, indicates there is not sufficient flow in the River during the summer months to meet existing needs and to justify revising the FAS Declaration. Given such deficiency, existing legal users of water would have the prior right to divert before any new applicants, such as SCWC. The courts have long ago decided that existing water right holders have the prior right to water introduced into a river where the discharger has no legal claim to that water (Eddy v. Simpson 3 Cal. 249). The Aerojet discharged groundwater is in essence abandoned water introduced into a stream and therefore available to existing users of the system.

Finally, although DWR is concerned about the petition by the Southern California Water Company to revise the FAS Declaration and its application to appropriate water, DWR is sympathetic to the needs of the Water Company to provide water to the Rancho Cordova area. To address this need, DWR staff participated in a meeting with SCWC, the Water Forum, and others to help identify methods and solutions to alleviate the areas water shortage. DWR will continue to assist in this effort in hopes that a reasonable solution can be found to meet Rancho Cordova and SCWC's water needs.